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ABSTRACT

The nature of education collective bargaining laws has not changed significantly since the movement reached a peak in the late 1960's. The District of Columbia and 31 states have laws providing bargaining rights to elementary-secondary teachers; 24 states provide bargaining rights to postsecondary faculty; 9 states permit teacher organizations to strike; and 17 states provide for arbitration of teacher contract disputes. Most states with bargaining laws require some form of mediation; some go even further and require binding arbitration. Most state bargaining laws are modeled after the National Labor Relations Act (NLRA) description of scope with interpretations varying widely. In the 1960's and the 1970's salary gains were the primary scope of bargaining; in the 1980's the focus is on working conditions, personnel procedures, and classroom duties. There is not enough evidence to determine the effects of bargaining on teacher salaries, quality, administration, or labor relations. State policymakers should know how the process works on their local levels, develop policies to help the process work, change policies slowly, and take into account state differences. A bibliography on the subject is included. (MD)

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3. Collective Bargaining Issues Continue

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3. Collective Bargaining Issues Continue

The Issue

No state has joined the education collective bargaining movement with enabling legislation since Tennessee in 1978. In a shaky economy, teachers appear to be less militant, particularly about salary issues. But these signals may be deceptive, particularly to those who wish bargaining would go away. A look at teacher bargaining activity over the past two decades reveals that, while some of the initial concerns are still with us, education bargaining is firmly entrenched. This Issuegram comments on dispute resolution and scope of bargaining (two continuing issues) and then takes a look at some of the emerging effects of teacher bargaining.

Education Bargaining Grows

It has been over 20 years since Wisconsin enacted the first legislation to permit public employees to join organizations or unions for the purpose of bargaining with their public employers. But the practice of teacher bargaining goes back to 1944, when the first teachers' contract was signed in Cicero, Illinois, -- a state that to this day does not have a statewide bargaining law. Over half of the states enacted such laws by the end of the sixties, and by the end of the

seventies, 31 states and the District of Columbia were conducting teacher bargaining under state law. Only a few states have effectively forbidden their teachers to bargain.

While the movement appeared to reach a peak in the late sixties, the nature of the laws has changed significantly since then. Early teacher bargainers operated under "meet and confer" laws that often did not permit binding agreements, and school boards clearly had final decision-making power on the issues. Today, most of the state bargaining laws require school boards to negotiate with teacher organizations that fulfill requirements for recognition and the resultant agreements are recognized by the state as valid and enforceable. In a number of states without bargaining laws, established practices, court decisions, and attorneys general opinions condone and reinforce teacher bargaining rights.

Some Facts

- 31 states and the District of Columbia have laws that provide bargaining rights to elementary/secondary teachers. States that do not have education bargaining laws are primarily in the South and Mountain West.
- 24 states have laws that provide bargaining rights to postsecondary faculty.
- 9 states permit teacher organizations to strike under certain conditions.
- 17 states' laws provide for some form of arbitration of teacher contract disputes in their laws.

Old Issues, More Sophisticated

Early on, debate raged over whether to permit teachers to bargain. Today, that is a moot question. Over the years, there have been some attempts to repeal statewide teacher bargaining laws, but none has been successful. Teachers' organizations, with large, well-organized lobbies, are not inclined to relinquish their hard-won rights. But where rights have not been written into law, state legislatures -- faced with economic concerns and increasing school board resistance -- are not about to budge, either. In either case, the issues are still with us.

Dispute resolution. There is a continuing concern for smooth and peaceful resolution of disagreements that arise during

the bargaining process -- impasse resolution. Strikes, sometimes prolonged, bitter and disruptive of the education system, are the nucleus of this concern. A handful of states permit teacher strikes under certain conditions. In other states, strikes are forbidden, but occur anyway.

Reflecting efforts to prevent strikes, most of the states with bargaining laws require bargaining parties at impasse to engage in mediation and fact-finding with neutral professional assistance. Some states go further, to binding arbitration, in which a neutral professional reviews the case and issues a decision that is final and binding on both parties. To permit or not to permit such arbitration is a prime policy concern for state decision makers. Those who are against arbitration say that neutral-party decisions impinge on the rights and obligations of state and local school boards. Those who favor arbitration claim that professional arbitrators make careful, informed decisions that take government rights and obligations into account, and further, that arbitrators who wish to keep working (they are selected by both parties) are compelled by self-interest to be fair and realistic.

Scope of bargaining. Scope of bargaining is a continuing concern that has no generally applicable solution for all states. While most state bargaining laws were modeled after the National Labor Relations Act, they have evolved differently. Practically all of them use the NLRA description of scope: "wages, hours and terms and conditions of employment." But interpretations, based on statutory law, actual practice, and court decisions, vary widely. Much of the time, scope questions are resolved as they arise. The courts or public employment relations agencies make determinations as scope disputes are brought to them. Legislatures react by extending the standard definition (above) to specific lists of bargainable and nonbargainable items in their laws.

In the sixties and seventies, salary gains were a primary focus for teachers. The economy of the eighties has shoved monetary concerns aside in favor of issues like working conditions, personnel procedures, classroom duties, and so forth.

Bargaining Effects Are Emerging

With the bargaining process settling in, attention is turning more toward the effects of bargaining. Claims have been made on both sides of the salary question: that teacher salaries

have improved as a result of bargaining, and that bargaining has had little effect on them. While teacher salaries have indeed gone up, factors other than bargaining may be as responsible or more responsible for their rise.

Certainly, teachers now have more of a voice in their working conditions. Again, there are arguments on both sides as to whether or not this new voice has resulted in an improvement in the quality, administration or labor relations of education. Some limited research provides evidence that bargaining has reduced instruction time while expanding preparation time. Some research shows that student achievement declines slightly and for a finite time after a strike. However, not enough evidence has been gathered to conclude firmly that bargaining and student achievement are related.

Studies indicate quite logically that governance, administration and finance are affected by bargaining. It is expensive, it takes extra personnel and extra time. On the other side, tradeoffs might include improved labor relations, more job satisfaction for teachers and even better instruction. Again, the evidence is not all in.

In a recent limited study of six representative school districts, Susan Moore Johnson found that bargaining, no matter how it is regulated and controlled from above, is essentially a local matter, right down to each school building. She notes, for example, that the same district contract is often implemented differently by different schools within the district. One of her conclusions is that there is no neat way to categorize bargaining's effect; analysis is muddied by economic, social and cultural conditions and attitudes. For the most part, Moore observes, labor practices have been "adapted to fit the educational enterprise and the norms of those who work there. . . . Collective bargaining has not, and probably will not, transform the schools into impersonal, rulebound workplaces."

State Policies Should Focus on Local Level

Whether bargaining takes place under state or local law, is legitimized by court action or AG opinions, or exists as a de facto process, state policy makers should:

- Inform themselves about how the process is working and on how contracts are being implemented, keeping a thoughtful eye on the local level, which is (regardless of state regulation) where the bargaining buck stops.

- Develop laws, policies, rules, regulations and options that will help the process to work at the local level.

- Be fully aware that bargaining is a process for people that is influenced and directed by personalities, the economy, and demographic, social and cultural conditions at the local level.

- Develop new policies, or amend old ones, slowly and cautiously in response to troublesome effects of bargaining. It is important not to move too fast -- new processes have to be "tried on and adapted." Give them time to "fit" before abandoning or altering them.

- Remember that policies that work in one state are not necessarily suitable for another state. Much depends on individual state differences.

What to Read

Basic Information

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